

37 Am. Jur. 2d Fraud and Deceit § 10

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Fraud and Deceit

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I. Overview

A. In General; Definitions and Types of Fraud

§ 10. Intrinsic and extrinsic fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Fraud may be either extrinsic or intrinsic, and judicial interposition will, at times, be governed by the court's determination as to which type of fraud has been established by the proof.¹ Extrinsic or collateral fraud is defined as actual fraud, such that there is on the part of a person chargeable with it the *malus animus* since the *mala mens* puts itself in motion and acts in order to take an undue advantage of some other person for the purpose of actually and knowingly defrauding him or her.² As applied to fraud, the term "intrinsic" usually means that fraud was practiced in procuring the transaction,³ as distinguished from extrinsic fraud which ordinarily means that fraud was practiced in the act of obtaining a judgment in the course of litigation involving a transaction. Otherwise stated, "extrinsic fraud" means fraud that induced a party to default or to consent to a judgment against him or her.⁴ Extrinsic fraud is actual fraud, but it is collateral to the transaction in litigation.⁵

A distinction is also made between extrinsic and intrinsic fraud in the right to bring an action for perjury or false evidence, the rule generally being that while no action will lie for perjury alone,⁶ it will lie where an independent or extrinsic fraud has been practiced in connection with the perjury.⁷ Accordingly, where the giving of false testimony is only a part of the carrying out of a scheme to defraud the plaintiff by means of the combination, fraud, and deceit of the defendants, an action for damages will lie.⁸

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Footnotes

¹ [Laun v. Kipp](#), 155 Wis. 347, 145 N.W. 183, 5 A.L.R. 655 (1914).

² [Flood v. Templeton](#), 152 Cal. 148, 92 P. 78 (1907).

³ [Toledo Scale Co. v. Computing Scale Co.](#), 261 U.S. 399, 43 S. Ct. 458, 67 L. Ed. 719 (1923); [Mathey v. Mathey](#), 179 Kan. 284, 294 P.2d 202 (1956).

⁴ [R.L. Hulett & Co. v. Barth](#), 884 S.W.2d 309 (Mo. Ct. App. E.D. 1994).

As to extrinsic fraud in obtaining judgments, generally, see [Am. Jur. 2d, Judgments § 19](#).

⁵ [Mathey v. Mathey](#), 179 Kan. 284, 294 P.2d 202 (1956); [Weyant v. Utah Savings & Trust Co.](#), 54 Utah 181, 182 P. 189, 9 A.L.R. 1119 (1919).

⁶ [Am. Jur. 2d, Perjury § 104](#).

⁷ [Burbrooke Mfg. Co. v. St. George Textile Corp.](#), 283 A.D. 640, 129 N.Y.S.2d 588 (1st Dep't 1954).

⁸ [Am. Jur. 2d, Perjury § 105](#).

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